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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 RICHARD W. R.,

11 Plaintiff,

12 v.

13 COMMISSIONER OF SOCIAL
14 SECURITY,

15 Defendant.
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CASE NO. 3:20-cv-06074-JRC

ORDER ON PLAINTIFF'S
COMPLAINT

17 This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73, and Local
18 Magistrate Judge Rule MJR 13. *See also* Consent to Proceed Before a United States Magistrate
19 Judge, Dkt. 2. This matter has been fully briefed. *See* Dkts. 23, 27, 30.

20 Plaintiff, Richard W. R., is a 62-year-old man with no prior employment due his
21 involvement with the criminal justice system since a young age, who claims he cannot work due
22 his mental impairments, which include schizoaffective disorder, anxiety, depressive disorder, and
23 adjustment disorder. In support of his application for benefits, plaintiff submitted several medical
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1 opinions from doctors and lay witness statements from his siblings, which report several
2 limitations regarding plaintiff's ability to work due to his mental impairments. However, the ALJ
3 rejected that evidence because it predated the relevant period or allegedly ignored plaintiff's
4 activities of daily living.

5 After considering and reviewing the record, the Court concludes that the ALJ erred in
6 rejecting the medical opinions and lay witness statements. Because medical opinions predating
7 the relevant period are relevant, the ALJ erred in rejecting them based solely on that reason. The
8 ALJ also erred in rejecting opinion evidence based on plaintiff's activities of daily living because
9 substantial evidence does not support the conclusion that those activities are transferable to a
10 work setting.

11 The errors are not harmless because the ALJ's evaluation of other evidence and the RFC
12 determination could well have differed had the improperly rejected opinion evidence been
13 credited. Therefore, this Court orders that this matter be remanded for further proceedings.

14 **BACKGROUND**

15 Plaintiff's application for Supplemental Security Income ("SSI") benefits pursuant to 42
16 U.S.C. § 1382(a) (Title XVI) of the Social Security Act was denied initially and following
17 reconsideration. *See* AR 87–97. Plaintiff's requested hearing was held before ALJ Allen G.
18 Erickson on July 25, 2019. *See* AR 30. On October 2, 2019, the ALJ issued a written decision in
19 which the ALJ concluded that plaintiff was not disabled pursuant to the Social Security Act. *See*
20 AR 24.

21 On September 4, 2020, the Appeals Council denied plaintiff's request for review, making
22 the written decision by the ALJ the final agency decision subject to judicial review. AR 1; *see* 20
23 C.F.R. § 404.981. In November 2020, plaintiff filed a complaint in this Court seeking judicial
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1 review of the ALJ's written decision. *See* Dkt. 4. Defendant filed the sealed administrative
 2 record regarding this matter on May 5, 2021. *See* Dkt. 19.

3 **DISCUSSION**

4 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of
 5 social security benefits if the ALJ's findings are based on legal error or not supported by
 6 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th
 7 Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)).

8 Plaintiff raises the following issues: (1) whether the ALJ erred by rejecting medical
 9 opinion evidence; (2) whether the ALJ erred by rejecting lay witness testimony; (3) whether the
 10 ALJ erred in the RFC determination; and (4) whether the ALJ erred at step five of the sequential
 11 analysis. Dkt. 23.

12 **I. Evaluation of Medical Opinion Evidence**

13 In 2017, the Administration enacted new regulations regarding how an ALJ should weigh
 14 medical opinions. For applications filed on or after March 27, 2017, the Administration has
 15 directed ALJs that they are no longer to defer to medical opinions from treating or examining
 16 sources (*see* 20 C.F.R. §§ 404.1527(c)), instead ALJs are to evaluate the persuasiveness of
 17 medical opinions by analyzing their "supportability" and "consistency," as well as other
 18 appropriate factors. 20 C.F.R. § 404.1520c(a).

19 This Court—and others—have concluded that the new regulations supplant judicial
 20 precedent regarding the weight given to controverted examining and treating source opinions, to
 21 the extent that there is a conflict. *See* Dkt. 20, *Mooney v. Commissioner of Social Security*, 3:19-
 22 cv-05103-RBL-JRC (W.D. Wash. Feb 14, 2020), *report and recommendation adopted*; Dkt. 15,
 23 *Martinson v. Commissioner of Social Security*, 3:20-cv-05149-JRC (W.D. Wash. August 25,

2020); *see also* *Gretchen S. v. Saul*, No. 6:19-CV-01842-IM, 2020 WL 6076265, at *4 (D. Or. Oct. 15, 2020) (ruling that the broad authority conferred on the Administration by 42 U.S.C. § 405 means that prior judicial precedent must yield in the face of new, permissible regulations and that “[a]s such, the 2017 regulations apply here and displace any case law precedent to the extent required to do so.”), *appeal filed* December 6, 2020; *see also* *Allen T. v. Saul*, No. EDCV 19-1066-KS, 2020 WL 3510871, at *3 (C.D. Cal. June 29, 2020) (“[T]he Court is mindful that it must defer to the new regulations, even where they conflict with prior judicial precedent. . .”).

Nevertheless, the Court makes no ruling in this case about whether the specific and legitimate standard of review applies herein. Resolution of this issue is not necessary to decide this case: regardless of the outcome of this issue, the Court must review whether the ALJ’s decision is supported by substantial evidence and is free from legal error. *See Lambert v. Saul*, 980 F.3d 1266, 1277 (9th Cir. 2020). That is, the ALJ “must provide sufficient reasoning that allows us to perform our own review, because the grounds upon which an administrative order must be judged are those upon which the record discloses that its action was based.” *Id.* (internal citations and quotations omitted).

A. Dr. Ruddell’s Medical Opinion

On October 23, 2017, Dr. Alysa A. Ruddell, Ph.D., performed a psychological evaluation of plaintiff and reported several limitations regarding his ability to work. AR 689–92. Specifically, Dr. Ruddell diagnosed plaintiff with marked anxiety and depression, and moderate insomnia and poor-quality social relationships. *Id.* at 690. She assessed a severe limitation in plaintiff’s ability to learn new tasks and marked limitations in his ability to communicate and perform effectively in a work setting, maintain appropriate behavior in a work setting, complete

1 a normal work day and work week without interruptions from psychologically based symptoms,
2 and in his ability to set realistic goals and plan independently. *Id.* at 691.

3 The ALJ found Dr. Ruddell's opinion unpersuasive because the opinion did not "take into
4 account the effect of medication on [plaintiff's] paranoia" and because it did not account for
5 plaintiff's "demonstrated ability to handle tasks such as applying for reduced bus fair (sic),
6 taking public transportation, reading, attending appointments, and being involved in Church
7 functions." *See* AR 21. Regarding the failure to account for medication, it is unclear what the
8 ALJ is basing that assumption on. The ALJ does not cite to anything in the record to support his
9 conclusion, which prevents this Court from reviewing the ALJ's reasoning. *See Lambert*, 980
10 F.3d at 1277. Furthermore, Dr. Ruddell specifically asked plaintiff about medications during the
11 interview, which suggests that she did take medications into account. *See* AR 689 ("Medications:
12 None for a week. He said he took medications in the past. Remeron and gabapentin worked.").

13 Regarding plaintiff's activities of daily living, disability claimants should not be
14 penalized for attempting to lead normal lives in the face of their limitations. *See Reddick v.*
15 *Chater*, 157 F.3d 715, 722 (9th Cir. 1998) (citing *Cooper v. Bowen*, 815 F.2d 557, 561 (9th Cir.
16 1987) (claimant need not "vegetate in a dark room" in order to be deemed eligible for benefits)).
17 The Ninth Circuit has consistently held that activities of daily living should not be used against a
18 plaintiff unless they show that the plaintiff "is able to spend a substantial part of his day engaged
19 in pursuits involving the performance of physical functions that are transferable to a work
20 setting." *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (citing *Fair v. Bowen*, 885 F.2d 597,
21 603 (9th Cir. 1989)).

22 The ALJ did not explain how applying for bus card, taking public transportation, reading,
23 attending appointments, and being involved in church activities are transferable to a work
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1 setting. Further, plaintiff points to evidence in the record that suggests that plaintiff was not able
 2 to do some of these things well. For example, plaintiff needed the help of Catholic Community
 3 Services to get the bus card, he fell asleep or was yawning during the appointment with Dr.
 4 Ruddell, and plaintiff's brother reported that plaintiff's participation in church activities was
 5 sometimes socially inappropriate. *See* AR 258, 692, 829. Therefore, the ALJ's reasons for
 6 rejecting Dr. Ruddell's medical opinion are not supported by substantial evidence.

7 **B. Medical Opinions from Before the Relevant Period**

8 Plaintiff argues that the ALJ erred when he rejected the medical opinions of five doctors
 9 because "they were issued years before the start of the relevant period." AR 21. These opinions
 10 reported several severe and marked limitations on plaintiff's ability to work, such as performing
 11 activities within a schedule, maintaining appropriate behavior, learning new tasks, and setting
 12 realistic goals. *Id.* Just as "medical evaluations made after the expiration of a claimant's insured
 13 status are relevant to an evaluation of the pre-expiration condition," medical evaluations made
 14 before the alleged onset date are similarly relevant. *See Smith v. Bowen*, 849 F.2d 1222, 1225–26
 15 (9th Cir. 1988). Therefore, this Court concludes that the ALJ erred by rejecting these medical
 16 opinions based solely on the date that they were issued.

17 Defendant argues that the ALJ also rejected the medical opinions for the same reasons the
 18 ALJ rejected Dr. Ruddell's medical opinion. *See* Dkt. 27, at 9. However, the ALJ did not
 19 mention those reasons in his written decision and "[l]ong-standing principles of administrative
 20 law require us to review the ALJ's decision based on the reasoning and actual findings offered
 21 by the ALJ—not post hoc rationalizations that attempt to intuit what the adjudicator may have
 22 been thinking." *Bray v. Comm'r of SSA*, 554 F.3d 1219, 1225–26 (9th Cir. 2009) (citing *SEC v.*
 23 *Chenery Corp.*, 332 U.S. 194, 196 (1947)). A reviewing court "cannot affirm the
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1 [Commissioner's] decision on a ground that the [Administration] did not invoke in making its
 2 decision." *Stout v. Comm'r Soc. Sec. Admin.*, 454 F.3d 1050, 1054 (9th Cir. 2006) (citations
 3 omitted).

4 **II. Evaluation of Lay Witness Testimony**

5 Plaintiff argues that the ALJ erred when he rejected the lay witness statements from
 6 plaintiff's brothers, Donald L. Wasson and Robert Reifsnyder, and plaintiff's sister, Vera
 7 Brokenshire. Dkt. 23, at 17. These statements described plaintiff's limitations regarding simple
 8 tasks, being on time, and his paranoia when outside. *Id.* When evaluating opinions from "other"
 9 non-medical sources an ALJ may expressly disregard such lay testimony if the ALJ provides
 10 "reasons germane to each witness for doing so." *Turner v. Commissioner of Social Sec.*, 613 F.3d
 11 1217, 1224 (9th Cir. 2010) (citing *Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001)).

12 Here, the ALJ rejected all three statements from plaintiff's siblings because they
 13 "ignore[d] [plaintiff]'s ability to handle tasks such as applying for reduced bus fair (sic), taking
 14 public transportation, reading, attending appointments, and being involved in Church functions."
 15 AR 22. As previously discussed, the ALJ's adverse conclusion based on plaintiff's activities of
 16 daily living is not supported by substantial evidence. *See supra*, section I.A. Therefore, the Court
 17 concludes that the ALJ erred in rejecting the lay witness statements based on that reason.

18 **III. Other Issues**

19 Plaintiff also argues that the ALJ erred in his RFC determination and at step 5 of the
 20 sequential analysis. *See* Dkt. 23, at 5, 14, 18. Because this Court is remanding this matter further
 21 proceedings, the ALJ must reassess all of the evidence and make another RFC determination. *See*
 22 *also* Program Operations Manual System (POMS) GN 03106.036 *Court Remand Orders*,
 23 <https://secure.ssa.gov/poms.nsf/lnx/0203106036> (last visited November 9, 2021) (a court order
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1 vacating a prior decision and remanding the case voids the prior decision and thus returns the
 2 case to the status of a pending claim). Thus, this Court does not address plaintiff's remaining
 3 issues.

4 **IV. Remedy**

5 "The decision whether to remand a case for additional evidence, or simply to award
 6 benefits[,] is within the discretion of the court." *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir.
 7 1987). If an ALJ makes an error and the record is uncertain and ambiguous, the court should
 8 remand to the agency for further proceedings. *Leon v. Berryhill*, 880 F.3d 1041, 1045 (9th Cir.
 9 2017). Likewise, if the court concludes that additional proceedings can remedy the ALJ's errors,
 10 it should remand the case for further consideration. *Revels v. Berryhill*, 874 F.3d 648, 668 (9th
 11 Cir. 2017).

12 The Ninth Circuit has developed a three-step analysis for determining when to remand
 13 for a direct award of benefits. Such remand is generally proper only where:

14 (1) the record has been fully developed and further administrative proceedings
 15 would serve no useful purpose; (2) the ALJ has failed to provide legally sufficient
 16 reasons for rejecting evidence, whether claimant testimony or medical opinion; and
 (3) if the improperly discredited evidence were credited as true, the ALJ would be
 required to find the claimant disabled on remand.

17 *Trevizo v. Berryhill*, 871 F.3d 664, 682–83 (9th Cir. 2017) (quoting *Garrison v. Colvin*, 759 F.3d
 18 995, 1020 (9th Cir. 2014)). However, when an ALJ errs, the proper course is to remand for
 19 further administrative proceedings "except in rare circumstances." *Treichler v. Comm'r of Social*
 20 *Sec. Admin.*, 775 F.3d 1090, 1099 (9th Cir. 2014).

21 Here, it is not clear that further administrative proceedings would serve no useful
 22 purpose. The ALJ will need to consider what impact the improperly rejected opinion evidence
 23 will have on the evaluation of other medical opinion evidence and the ultimate RFC
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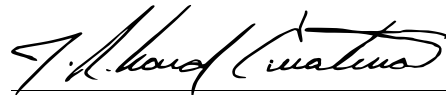
1 determination. This type of fact-finding is a function of the ALJ. Therefore, a remand for further
2 proceedings is appropriate.

3 **CONCLUSION**

4 Based on these reasons and the relevant record, the Court **ORDERS** that this matter be
5 **REVERSED** and **REMANDED** pursuant to sentence four of 42 U.S.C. § 405(g) to the
6 Commissioner for further consideration consistent with this order.

7 **JUDGMENT** should be for plaintiff and the case should be closed.

8 Dated this 12th day of November, 2021.

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11 J. Richard Creatura
12 Chief United States Magistrate Judge
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